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Supreme Court, U.S.
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No. 00-480

IN THE

Supreme Court of the United States

AGRIBANK, FCB,

Petitioner,

v.

MARK A. RAMSDEN,
RAELYNN RAMSDEN and
MILTON R. RAMSDEN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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I. STATEMENT OF FACTS

Petitioner's Appendices are generally accurate on the facts and posture of this matter. Petitioner is wrong, however, on a key point. Respondents have consistently contended that the state trial court decision is final for purposes of the Full Faith and Credit Act. (*See*, for example, "Brief of Appellants" (the Respondents in this Honorable Court) to Seventh Circuit dated November 22, 1999, pp. 11-15). Although the Seventh Circuit deemed the Full Faith and Credit Act inapplicable, Respondents continue to assert that the state trial court's ruling was not a final ruling on questions of claim preclusion and issue preclusion.

II. PETITIONER PREMATURELY PETITIONS THIS COURT WHILE THIS SAME ISSUE IS PENDING BEFORE THE STATE COURT OF APPEALS.

This Petition for Certiorari comes while this identical issue (i.e., whether the state action must be enjoined because of the federal summary judgment) is pending before the State of Wisconsin Court of Appeals. Petitioner first sought appeal of a non-final order with the Wisconsin Court of Appeals. While its interlocutory appeal was pending before the State of Wisconsin Court of Appeals, Petitioner sought a federal court injunction from the United States Federal Court, Western District of Wisconsin. ("Brief of Appellants" to Seventh Circuit, dated November 22, 1999, p. 3). The State of Wisconsin Court of Appeals petition for interlocutory relief is stayed pending the outcome of this petition for certiorari.

When it petitioned for a federal District Court injunction, Petitioner declared, "It is clear that AgriBank will prevail on its defense that both claim and issue preclusion bar Plaintiffs' state law claims." (Brief in Support of AgriBank, FCB's Motion for Preliminary and Permanent Injunctive Relief to Protect the Court's Judgment, p. 31). If Petitioner fails on the interlocutory appeal, this Petition is moot. Given comity concerns surrounding federal court injunctions, Petitioner should exhaust the state interlocutory appeal which it filed before seeking federal intervention.

This Honorable Court is the court of last resort. *United States of America v. DCS Development Corp.*, 590 F. Supp. 1117, 1122 (W.D.N.Y. 1984). In *Parsons Steel v. First Alabama Bank*, 474 U.S. 518, 525, 106 S. Ct. 768 (1986) (hereafter, "*Parsons II*"), the Court established that,

> Even if the state court mistakenly rejected respondents' claim of *res judicata*, this does not justify the highly intrusive remedy of a federal court injunction. . . . Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court.

Especially where federal and state conflict may be avoided, Petitioner should pursue a pending interlocutory appeal before petitioning this Court for Certiorari.

III. THE SEVENTH CIRCUIT PROPERLY APPLIED *PARSONS II.*

Petitioner incorrectly charges that the Seventh Circuit Court of Appeals is in "direct conflict" with *Parsons II.* The instant case and *Parsons II* deal with state court's rulings on *res judicata*. The Seventh Circuit expressly considered this Court's reasoning in *Parsons II* and applied it with guidance from *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), concluding that on the facts of this case the District Court should not have enjoined the state court action.

Parsons II held that the relitigation exception to the Anti-Injunction Act is inapplicable when a state court has ruled on the merits of *res judicata*, provided that the ruling is final for purposes of the Full Faith and Credit Act. *See Parsons Steel*, 474 U.S. at 524-25. AgriBank stresses that the Seventh Circuit did not hold that the state court's denial of summary judgment was final under the Full Faith and Credit Act. Because the state court's ruling was final regarding *res judicata* but not final for Full Faith and Credit purposes, the Court of Appeals did not apply *Parsons II* to bar the injunction. Instead, it used *Parsons II* as a guide on what considerations were important in a federal court's discretionary determination to enjoin state court action. The Seventh Circuit properly recognized that a state court had applied state law on the preclusion issues. Nothing in *Parsons II* remotely suggests that the Seventh Circuit must ignore the state court's ruling on claim/issue preclusion.

The Seventh Circuit noted, "just because a federal court has the statutory power to enjoin a state court proceeding does not mean that it should exercise that authority." (Petition

at A-25). *See also Daewoo Elecs. v. Western Auto Supply Co.*, 975 F.2d 474, 478 (8th Cir. 1992). Finding that the District Court abused its discretion, the Court of Appeals advocated a rule that "*restricts* a federal court's discretion to enjoin state court proceedings once the state court expressly and unambiguously decides a *res judicata* defense, whether or not there has been a final judgment on the entire claim in state court . . ." (Petition at A-27) (first emphasis added). This analysis places no *Parsons II* ban on federal courts' discretion to enjoin state actions. It emphasizes that federal courts should reluctantly overturn state courts' prior determinations on *res judicata*.

The Seventh Circuit rule restricting federal court discretion honors the rationale of this Honorable Court, which acknowledged "the important values of federalism and comity embodied in the Full Faith and Credit Act." *Parsons Steel*, 474 U.S. at 523. The Seventh Circuit held that the state court's ruling might not enjoy Full Faith and Credit. However, the Seventh Circuit recognized that the state trial court had finally rejected AgriBank's *res judicata* defense, and therefore deserved deference through the "values of federalism and comity" recognized in *Parsons II*.

The federal court cannot ignore issues of equity and comity even if a state trial court's rejection of preclusion is not "final" under the Full Faith and Credit Act. Rather, as this Court has established, "the mere fact that the case falls within one of sec. 2283's exceptions does not 'qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding.' " *Mitchum v. Foster*, 407 U.S. 225, 243 (1972). The Court of Appeals placed no ban on federal courts enjoining state actions. It merely considered the propriety of an injunction given comity concerns presented by the facts and posture of this case.

IV. THE SEVENTH CIRCUIT'S RULING DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS.

The Seventh Circuit has upheld District Court injunctions under the Anti-Injunction Act relitigation exception. It is incorrect to imply that the Seventh Circuit refuses to enjoin state actions when necessary. In *Harper Plastics v. Amoco Chemicals Corp.*, 657 F.2d 939 (7th Cir. 1981) the Seventh Circuit affirmed a District Court injunction of state court proceedings after the District Court had dismissed the federal action. *See also Samuel C. Ennis & Co., Inc. v. Woodmar Realty Company*, 542 F.2d 45 (7th Cir. 1976).

A. *First Alabama Bank v. Parsons Steel, Inc.*, 825 F.2d 1475, 1480-81 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060 (1988) (*Parsons III*) Undermines Petitioner.

Petitioner incorrectly contends that the Seventh Circuit's ruling directly conflicts with *First Alabama Bank v. Parsons Steel, Inc.*, 825 F.2d 1475, 1480-81 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060 (1988) (*Parsons III*). Injunctions are discretionary determinations. There is no bright-line divining when one is appropriate or mandatory.

Parsons III in part turned upon a federal court determination that a state judgment was not final. However, Petitioner ignores the rationale for that determination — although a verdict had there been reached, the matter was unappealable. Post-trial motions in *Parsons* raised claim/issue preclusion questions for trial court reconsideration. Accordingly, there was no finality to the state court decision because the matter could not be appealed to the state appellate

court prior to resolution of post-trial motions. *Id.* at 1481. *Parsons III* expressly recognized that partial summary judgment, albeit interlocutory, was appealable and thus final. *Id.* The Court quoted *Sterling Oil of Oklahoma, Inc. v. Pack*, 291 Ala. 727, 287 So. 2d 847 (1973):

> We have been cited to no persuasive authority, and we have found none, on either side of this issue. We believe the appealable nature of such an order — given the other prerequisites — is the controlling factor; and we, therefore, hold that the principle of comity requires that we give *res judicata* effect to the judgment of the federal court. . . . *Id.*

In the instant case, AgriBank has filed an interlocutory appeal to the Wisconsin Court of Appeals. While the Seventh Circuit recognized that the state court's rejection of Petitioner's *res judicata* defense was not a final judgment for purposes of the Full Faith and Credit Act, it acknowledged that a final determination had been made by the trial court and it afforded that determination some respect. This sharply contrasts to *Parsons III*.

i. *Younger v. Harris* Restricts Neither Comity Concerns nor Deference to State Holdings.

Parsons III considered and rejected application of the *Younger* doctrine in that case. *Id.* at 1483. Citing *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989), Petitioner claims that *Younger* permits deference to states only in "exceptional circumstances." (Petition at 14). There is no support for the rule of law advanced by Petitioner that would mandate

an injunction in all but "exceptional circumstances," because deference is not otherwise required. Injunctions are discretionary; in this case, the Circuit Court merely recognized that the District Court had abused its discretion. Petition at A-30. Even in cases where *Younger* unquestionably applies, an injunction is in no way mandatory.

When the District Court applied *Younger* in *Parsons III* it specifically found that the plaintiff had acted in bad faith. *Parsons III* at 1482. In the case at bar, however, the District Court made no finding that Plaintiffs had acted in bad faith or to harass the Petitioner by pursuing the state court action. Rather, the District Court merely held that if the elements of claim or issue preclusion were present, it could issue an injunction. (Petition at A-9). Given the *Younger* and *Parsons II* comity considerations, the Seventh Circuit found abstention to be appropriate in this matter and held that the District Court had abused its discretion. The Seventh Circuit also noted that the state trial court had specifically found that the Ramsdens were not being vexatious. (Petition at A-21). The Circuit Court in *Parsons III* did not find it necessary that the plaintiff act in bad faith to permit an injunction of a state action, but that factual consideration cannot be ignored.

The Seventh Circuit referenced *Younger* for instruction on comity issues surrounding the state court rejection of *res judicata*. It might also have found justification for the application of the *Younger* doctrine in the environmental concerns of the State of Wisconsin (here, the Ramsdens purchased a dairy farm contaminated by gasoline, Petition at A-3). *See, e.g., City of Chesapeake v. Sutton Enterprises, Inc.*, 138 F.R.D. 468, 475 (E.D. Va. 1990)

(A state has a vital interest in the "health and safety of [its] citizens. Protecting the environment from toxic substances is crucial to this interest.") The *Younger* parameters are satisfied by sellers misrepresenting facts about contaminated dairy farms (particularly in Wisconsin, "America's Dairyland") and endangering Wisconsin citizens.

Finally, quoting *Mitchum v. Foster*, 407 U.S. 225, 243 (1972), which was cited by this Court in *Parsons II* at 526, the Seventh Circuit noted that merely because a case falls within an exception to the Anti-Injunction Act does not "qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." The federal judiciary is to consider comity even beyond *Younger*. Merely because "an injunction may issue under the Anti-Injunction Act does not mean that it must issue. The injunction must be an otherwise proper exercise of the [court's] equitable power." *Daewoo Elecs. v. Western Auto Supply Co.*, 975 F.2d 474, 478 (8th Cir. 1992). The legislative intent of the Anti-Injunction Act defaults to no injunction unless stringent conditions are met, and even then in no circumstance mandates an injunction.

B. Petitioner Misuses *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996).

Petitioner wrongly relies upon *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996), claiming that it directly conflicts with the Seventh Circuit's decision. Petitioner wrongly asserts that *In re SDDS* makes it an abuse of discretion not to issue an injunction in the Eighth Circuit. It is the logical extension of Petitioner's peculiar position that whenever defendants raise claim preclusion in state courts following federal actions, federal courts must enjoin pending state actions.

At page 10 of its brief, Petitioner claims, "In the Seventh Circuit, it is an abuse of discretion for a District Court to enjoin relitigation once the state court has expressly ruled on the *res judicata* issue." Petitioner is wrong. The Seventh Circuit never barred an injunction in such circumstances. It properly noted that grants of injunctive relief are discretionary. The Court merely held, based on the facts of this case, that the District Court had abused its discretion. Obviously, in cases with similar facts, federal courts might reach different results by properly exercising discretion.

In re SDDS, the defendant state of South Dakota repeatedly thwarted SDDS's business endeavors and eventually forced it into ruin. *Id.* at 1033. The federal court had held that the state violated SDDS's constitutional rights. Later, SDDS sued for compensation in state court and South Dakota denied violating SDDS' rights. The Eighth Circuit determined that the rights of SDDS had already been adjudicated and refused to relitigate them. *Id.* at 1041. Clearly, the facts of *SDDS* are distinguishable from the case at bar.

In re SDDS actually supports the Seventh Circuit. The Eighth Circuit cited *Parsons II*:

> Because the South Dakota trial court did not rule on the claim preclusive effect of *SDDS VI*, *see SDDS VII*, Mem. Op. at 2 n. 3, 5, 20-21, we are not precluded from protecting our judgment in *SDDS VI* under the relitigation exception to the Anti-Injunction Act. *See Daewoo Elecs. v. Western Auto Supply Co.*, 975 F.2d 474, 479 (8th Cir. 1992). *Id.* at 1040, fn. 14.

The Eighth Circuit appreciated that once the trial court decided the claim preclusion issue, it would defer to the trial court. This makes perfect sense because the state trial court is best situated to properly and efficiently apply state claim and issue preclusion law. Once a trial court rejects a claim/issue preclusion defense, it casts doubt on a subsequent reversal by a federal court on grounds of claim or issue preclusion. "*Any doubts* as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 297 (1970) (emphasis added).

"Any doubts" paints with broad strokes. How can Petitioner deny "any" doubt after a state court applying state law holds claim/issue preclusion inapplicable? In this case, there were three obvious choices for the federal court. First, strictly observing the mandate of resolving any doubt in favor of allowing the state action to proceed, the federal court should simply have deferred to the state court and refused to enjoin the state action. This guarantees good relations and respect between the two court systems and addresses comity. A second solution was available to the federal court. Petitioner had sought interlocutory relief from the state appellate court and concurrently sought a federal injunction. The federal District Court might have held the issuance of an injunction in abeyance until the state Court of Appeals had ruled. If the state appellate court determined that claim/issue preclusion applied, the parties would have avoided federal and state judicial conflict. Finally, as the Seventh Circuit did, the federal District Court might have considered the merits of an injunction in light of the prior state court determination that rejected claim/issue preclusion.

C. Other Cases Cited by Petitioner Fail to Support the Petition.

Other cases cited by Petitioner fail to support the existence of a conflict among the Circuits. In *Nakash v. Marciano*, 882 F.2d 1411 (9th Cir. 1989) the federal District Court stayed the federal action and refused to enjoin the state action which had been pending for nearly five years before the federal action was filed. There, the Ninth Circuit held that the moving party engaged in litigation for five years and then filed the second federal action in a forum-shopping endeavor because the state court action was not going well. *Id.* at 1417. There, the federal court actually stayed the federal action due to the facts and posture of that case.

Another case cited by Petitioner, *American Town Center v. Hall 83 Associates*, 912 F.2d 104 (6th Cir. 1990), supports *Respondents'* position. In its discretion, the District Court refused to enjoin the state action. There, the state trial court had already rejected the *res judicata* defense on factual bases and left the door open for a later ruling after presentation of evidence at trial. *Id.* at 111-12 n.1. In reviewing the federal District Court's decision, the Circuit Court stated, "Given the considerations of comity and the unwillingness of federal courts to review state court decisions, we conclude that the District Court did not abuse its discretion in refusing to enjoin the state proceedings." *Id.* at 112. It is clear that the Ninth Circuit acknowledged the comity issues recognized by the Seventh Circuit in the case at bar. There, the state trial court had admittedly left the *res judicata* defense undecided and the Ninth Circuit still acknowledged comity issues existed because the state court had already ruled on the matter even though a "final judgment" had not been rendered.

In the instant case, the trial judge flatly denied summary judgment on claim/issue preclusion, stating claim/issue preclusion "should not be invoked in this case." (Decision on Defendant's Motion for Summary Judgment, p. 16). At the same time, the trial court specifically referenced the need to resolve factual issues when it denied summary judgment on the misrepresentation claims. *Id.* The Seventh Circuit recognized the same comity issues raised in *American Town Center* and similarly concluded an injunction was unwarranted.

Amalgamated Sugar Co. v. NL Industries, Inc., 825 F.2d 634 (2d Cir.), *cert denied*, 484 U.S. 992 (1987) is also inapposite. There, the trial court, similar to *American Town Center*, indicated that factual issues were present and declined to rule on the summary judgment motion brought on *res judicata* grounds until a trial upon the facts. Thus, that is not a case where the federal court had any reason to consider the propriety of overruling the prior decision of the state court.

V. THIS CASE BRINGS NO NEW FEDERAL ISSUE.

AgriBank incorrectly asserts that the Seventh Circuit holding raises "important federalism issues." Comity between state and federal courts is an important issue, but this Court has already given it extensive and adequate consideration. The Anti-Injunction Act scope and limitations have been well-defined by *Parsons II*, *Younger*, and many other decisions. It is well-settled that generally state courts should try state cases "free from interference by federal courts." *Younger*, 401 U.S. at 43. Federal courts are encouraged to abstain from enjoining even some cases that fall within an exception to the Anti-Injunction Act,

preventing "undue interference with state proceedings." *New Orleans Public Service, Inc., v. Council of the City of New Orleans*, 491 U.S. at 359.

A federal court's decision whether to enjoin a state court proceeding is discretionary: "[T]he fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 151 (1988) (emphasis added). AgriBank disagrees with the Seventh Circuit's holding. That does not compel this Honorable Court to formulate a new rule of law for the particular facts of this case.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Certiorari should be denied.

Respectfully submitted,

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